

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL NOTE

SB 997 - HB 1161

March 5, 2015

SUMMARY OF BILL: Authorizes a litigation financier to attempt to effect arbitration or otherwise effect waiver of a consumer's right to trial by jury, and to assign a litigation financing contract in whole or part. Specifies that a "knowing or intentional" violation, rather than just violation, of the Tennessee Litigation Financing Consumer Protection Act shall make the litigation financing contract unenforceable, and shall be construed to be an unfair or deceptive act or practice affecting the conduct, trade or commerce and subject to all sanctions, penalties and remedies provided in the Act, including attorney's fees and costs. Deletes the provision stating that any lien, subrogation interest or right of reimbursement against the consumer's legal claim shall take priority over any lien, subrogation interest or right of reimbursement of the litigation financier. Removes the prohibition for a litigation financier to enter into an agreement with a consumer that has the effect of incorporating the consumer's obligations to the litigation financier that are contained in the original litigation financing transaction into a subsequent litigation financing transaction.

Establishes that the maximum annual ten percent fee imposed on all consumers entering into litigation financing transactions will be imposed on the total original amount of the litigation financing transaction, rather than the original amount of money provided to the consumer. Removes the three-year term limit on litigation financing transactions and establishes that the maximum yearly fee, not to exceed \$360 per year for each \$1,000 of the litigation financing transaction balance and not including the annual 10 percent fee, applies to transactions of less than \$1,000 as well as those greater than \$1,000. Such fee, under current law, includes any underwriting and organization fees, and any other charges, fees or consideration, except for the annual 10 percent fee. The proposed legislation deletes any such inclusion and authorizes a litigation financier to also impose a customary fee, not to exceed 0.35 percent of the litigation financing transaction balance, to defray the ordinary costs of opening, administering, and terminating a litigation financing transaction, including, but not limited to, costs associated with: underwriting and documenting the account; securing and maintaining account information; validating consumer information; offering electronic and phone access to accounts; processing account transactions; responding to customer inquiries; providing periodic billing statements; marketing activities related to acquisition of the account; and all other services or activities conducted by the litigation financier related to the consumer legal funding. Authorizes a litigation financier to, in addition to all other fees, impose a fee for the expedited delivery of funds, provided that a free delivery option is offered.

ESTIMATED FISCAL IMPACT:

NOT SIGNIFICANT

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Assumption:

- The proposed legislation will not impose any additional requirements on the Attorney General's Office or the Secretary of State.
- Any fiscal impact as a result of this bill will be borne by private parties.

IMPACT TO COMMERCE:

Other Impact – Litigation financiers will realize an increase in revenue as a result of additional fees. Due to multiple unknown factors, any such increase cannot be quantified with reasonable certainty.

Assumptions:

- The proposed legislation will authorize litigation financiers to impose fees in addition to the fees currently authorized to be imposed. Imposition of such additional fees is not anticipated to significantly reduce quantity demanded for products offered by such litigation financiers.
- As a result, litigation financiers' business revenue is estimated to increase. Due to multiple unknown factors, such as the average original litigation financing transaction amount, average fees imposed on litigation financing transaction balance, and the number of litigation financing transactions entered into, any such increase in business revenue cannot be quantified with reasonable certainty.

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.

A handwritten signature in dark ink, appearing to read "Jeffrey L. Spalding", written in a cursive style.

Jeffrey L. Spalding, Executive Director

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